IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

M/s Jaina Scientific Glass Works v/s Shree Minerals

S.B. CIVIL FIRST REGULAR APPEAL No.181/1990 against the judgment & decree dated dated 28.5.90 passed by Shri Kailash Chand Jain, RHJS, Additional District Judge No.5, Jaipur City in Civil Suit No.287/84 (1002/84).

Date of Judgment :: 6.12.2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Shri Sanjay Joshi for the defendant appellant.
None present for the plaintiff respondent despite service

BY THE COURT:

1. Heard learned counsel for the defendant-appellant.

2. This defendant's appeal is directed against against the judgment & decree of trial court dated 28.5.1990, whereby the Suit No.287/84 (1002/84) filed by plaintiff M/s Shree Minerals was decreed against the defendant, appellant herein, for a sum of Rs.48,772.75.

3. Brief facts leading to the present appeal are as under; that the plaintiff sold Silica Sand to the defendant between the period September, 1980 to March 1981 under various invoices amounting to Rs.49,450.10 and added to that a sum of Rs.364/- towards other selling

expenses and thus out of total sum of Rs.49,814.10, the defendant paid only a sum of Rs.12,631.84 leaving the balance sum of Rs.37,182.26. Against this balance amount, the defendant paid only a sum of Rs.10,000/- by Demand Draft on 11.10.1982 and did not pay the balance amount of Rs.27,182.26 for which the present suit was filed claiming further interest @ 18% p.a.

4. The learned trial court framed various issues and while holding that the aforesaid balance amount of Rs.27,182.26 was due to be paid by the defendant against the goods supplied to it which the the defendant failed to pay without any valid reason, the learned trial court further awarded interest @ 18% p.a. while deciding issue No.7 in this regard.

5. Learned counsel Shri Joshi took this court through the pleadings and evidence on record and submitted that plaintiff failed to prove any contract with regard to the interest on the alleged amount due against the goods supplied by the plaintiff. While he could not find much support in the evidence to contest his client's liability towards unpaid price of the goods supplied by the plaintiff, the learned counsel seems to be justified in submitting that there was no specific contract or documentary evidence like printed terms on invoices etc. for payment of interest on the unpaid price of the goods.

6. The learned counsel for the appellant fairly submitted that in view of section 61(2) of the Sale of Goods Act, 1930 also, though the court could award the interest even in the absence of specific contract in this regard, he submits that interest @ 18% p.a. awarded by the learned trial court is on very higher side particularly in view of sharp fall in rates of interests over last 10 years. He relied upon two judgments in support of his submission – (i) M/s M.K.M.Moosa Bhai Amin, Kota v/s Rajasthan Textile Mills, Bhawanimandi (AIR 1974 Rajasthan 194) and (ii) Rajpati Prasad v/s Kaushalya Kuer and others (AIR 1981 Patna 187), where respective High Courts relying upon the well settled proposition of law that it is within the discretion of the court u/s 61(2) of the Act to award the reasonable rate of interest in the absence of any specific contract to this effect and in those cases award of interest at the rate of 6% p.a. and 9% p.a., respectively, was awarded by the High Courts. The learned counsel accordingly submits that rate of interest of 18% p.a. deserves to be reduced to 9% p.a.

7. Having considered the submissions of the learned counsel for the appellant and having perused the record, I find some force in the submission of the learned counsel for the appellant. The rate of interest of 18% p.a. awarded by the trial court appears to be on higher side and in the opinion of this court, the same

deserves to be reduced to 12% simple interest per annum.

8. Accordingly, this appeal is partly allowed and the finding of the learned trial court on all other issues is confirmed. The rate of interest awarded by the learned trial court is reduced to 12% p.a. simple interest. The decree be made accordingly.

9. The appeal is partly allowed. No order as to costs.

(Dr. Vineet Kothari),J.

Chauhan/